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GERALD ARMSTRONG and THE  
6 GERALD ARMSTRONG CORPORATION

RECEIVED  
AUG 26 1994  
HUB LAW OFFICES

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF MARIN

10 CHURCH OF SCIENTOLOGY INTERNATIONAL,) No. 157 680  
11 a California not-for-profit )  
religious corporation, )  
12 )  
Plaintiff, )  
13 )  
vs. )  
14 )  
GERALD ARMSTRONG; MICHAEL WALTON; )  
15 THE GERALD ARMSTRONG CORPORATION )  
a California for-profit )  
16 corporation; DOES 1 through 100, )  
inclusive, )  
17 )  
Defendants. )  
18 )  
Date: September 9, 1994  
Time: 9:00 a.m.  
Dept: One  
Trial Date: 9/29/94

ARMSTRONG'S MEMORANDUM IN  
OPPOSITION TO MOTION FOR  
SUMMARY JUDGMENT

19 I. INTRODUCTION

20 In its motion for summary judgment, Scientology rests solely  
21 on the litigation privilege derived from Civil Code section 47.

22 As we argue below, summary judgment should not be granted as  
23 to the first cause of action. The portion of the Miscavige  
24 declaration which defames and attacks Armstrong was filed by  
25 Miscavige in an effort to avoid being deposed and had nothing to  
26 do with Armstrong who had been mentioned months before in the  
27 context of an opposition to a summary judgment motion as a victim  
28

1 of Scientology's use of the judiciary as an tool of Fair Game.

2 1/

3 Summary judgment as to the second cause of action should be  
4 denied because Scientology was ordered not to use the fruits of  
5 discovery in this action for any purpose other than those involved  
6 in the instant litigation. Notwithstanding said protective order,  
7 Scientology used the fruits of discovery herein as the basis for a  
8 "Dead Agent Pack" <sup>2/</sup> that assassinates Armstrong's character and  
9 which that it distributed to the media.

10 **II. THE MISCAVIGE DECLARATION IS NOT PRIVILEGED**

11 On February 8, 1994, in CSI v. Fishman Scientology's leader,  
12 David Miscavige (Scientology's Ex. J at 5:8-6:16, 13:21-22), <sup>3/</sup>  
13 executed a declaration in support of a motion asking a federal  
14 judge to review a magistrate's order that he submit to deposition  
15 because he had been avoiding service of a subpoena. (Id. at 2:15-  
16 17, 9:15-18) Miscavige was not a party to the action. Miscavige  
17 takes this opportunity to attack Armstrong as a "liar," whom  
18 Miscavige claims as having falsely stated that he was "in fear of

19 \_\_\_\_\_  
20 <sup>1</sup> Fair Game has been judicially recognized as a practice  
21 of Scientology since 1976, and as Scientology's practice toward  
22 Armstrong from 1984 through 1991. (Allard v. Church of  
Scientology, (1976) 58 Cal.App.3d 439, 443, 129 Cal.Rptr.797;  
Wollersheim v. Church of Scientology, (1989) 212 Cal.App.3d 872;  
Church of Scientology v. Armstrong (1991) 232 Cal.App.3d 1060)

23 <sup>2</sup> Hubbard defined a "dead agent caper" as follows:  
24 "The "dead agent caper" was used to disprove the lies. This  
25 consisted of counter-documenting any area where the lies were  
26 circulated. The lie "they were \_\_\_\_\_" is countered by a document  
27 showing "they were not." This causes the source of the lie and any  
other statements from that source to be discarded." (Separate  
Statement at ¶ 25) The Dead Agent procedure is to counter "Black  
Propaganda." (Id. at ¶¶ 24-15)

28 <sup>3</sup> It is interesting to note that both Miscavige and CSI  
share the same attorney, Michael Lee Hertzberg of New York City.  
(\* )

1 his life" from Scientology's use of Fair Game.

2 Miscavige testified

3 For example, Mr. Young repeats the allegations made  
4 by Gerry Armstrong that the Church practices "Fair Game"  
5 and that Gerry Armstrong was in "fear of his life." To  
6 bolster the validity of this allegation, Vaughn Young  
7 refers to the Breckenridge decision. What Mr. Young  
8 fails to disclose, however, is the fact that following  
9 that opinion, Armstrong was proven a liar. In a police-  
10 sanctioned investigation, Gerry Armstrong was captured  
11 on video tape acknowledging his real motives, namely a  
12 plot to overthrow the Church leadership and gain control  
13 of the Church. On those very video tapes, Armstrong  
14 acknowledges he not only isn't "afraid," but that he  
15 "will bring the Church to its knees." While plotting  
16 his overthrow attempt he gives advice that the Church  
17 should be accused of various criminal acts. When told  
18 no evidence exists to support such "charges," he  
19 responds, "just allege it." It should be noted that  
20 while Gerry Armstrong had been an "informant" during the  
21 IRS criminal investigation, based on these tapes and  
22 statements, the IRS dropped him as a witness, thereby  
23 repudiating his credibility. Vaughn and Stacy Young  
24 were fully aware of these facts as Stacy wrote the cover  
25 story in Freedom Magazine that exposed Armstrong's plot.

26 (Separate Statement at ¶ 8)

27 Vaughn Young had not said anything regarding statements made  
28 by Gerald Armstrong. In opposition to a motion for summary  
judgment, Fishman and Geertz' supplied testimony from Vaughn Young  
per declaration executed October 23, 1993. Young had been a  
member of Scientology from 1969-1989 and testified regarding  
Scientology's use of the judicial system to implement the Fair  
Game policy to rebut CSI's statements to the contrary. Young  
stated

29 In fact Fair Game did continue. Although the Guardian's  
30 Office was "disbanded," a new campaign was undertaken  
31 against Gerry Armstrong in 1981, a staff member who had  
32 fled with some of Hubbard's files. Contrary to what Mr.  
33 Farny said, there were Fair Game actions taken against  
34 Armstrong after the GO was "disbanded." I know because  
35 I sat in on those strategy meetings and was ordered by  
36 Hubbard as well as David Miscavige to "get Armstrong."  
37 For example, Hubbard ordered a "reward" poster that

1 would characterize Armstrong as a criminal. (I did not  
2 comply with the order, for which I was severely berated  
3 by Miscavige. [¶] The use of Fair Game on Armstrong  
4 was confirmed in 1984 when California Superior Court  
5 Judge Paul Breckenridge, Jr., ruled against Scientology  
6 with an opinion that included a statement about the  
7 civil rights of members and Hubbard: "In addition to  
8 violating and abusing its own members civil rights, the  
9 organization over the years with its 'Fair Game'  
10 doctrine has harassed and abused those persons not in  
11 the Church whom it perceives as enemies. The  
12 organization clearly is schizophrenic and paranoid, and  
13 this bizarre combination seems to be a reflection of its  
14 founder LRH. The evidence portrays a man who has been  
15 virtually a pathological liar when it comes to history,  
16 background and achievements. The writings and documents  
17 in evidence additionally, reflect his egoism, greed,  
18 avarice, lust for power, and vindictiveness and  
19 aggressiveness against persons perceived by him to be  
20 disloyal or hostile."

21 (Separate Statement at ¶8)

22 In order for the Civil Code section 47 privilege to apply in  
23 litigation, a communication must have "an objective relationship  
24 to the litigation." (Shavar v. Superior Court (1994) 30  
25 Cal.Rptr.2d 597, 598-599; Younger v. Solomon (1974) 38 Cal.App.3d  
26 289, 301)

27 A document is not privileged merely because it has  
28 been filed with a court or in an action. The privileged  
status of a particular statement therein depends on its  
relationship to an actual or potential issue in an  
underlying action.

(Shavar, 30 Cal.Rptr.2d at 599)

21 In Younger v. Solomon, supra., respondent served an  
22 interrogatory to appellant regarding a complaint filed against  
23 appellant with the state bar and attached a copy of said complaint  
24 as an exhibit. Based on said use of discovery, appellant cross-  
25 complained against the lawyer who so used discovery. Summary  
26 judgment was granted as to the cross-complaint. The court of  
27 appeal reversed. The court of appeal stated:

1 The term "process" as used in the tort of abuse of  
2 process has been broadly interpreted to encompass the  
3 entire range of procedures incident to litigation.  
4 (Barquis v. Merchants Collection Association 7 Cal.3d  
5 94, 104, fn 4 ...) Barquis explains the rule in this  
6 manner:

7 ". . . In Thorton v. Rhoden (1966) 245 Cal.App.2d 80,  
8 94-95 . . ., the court recognized that while 'the giving  
9 of a notice that a deposition will be taken is not  
10 "process" in the strictest sense of the word . . . in a  
11 proper case [the] abuse of the powers that a litigant  
12 derives from the taking of a deposition on proper notice  
13 gives such notice that of "process" for the purpose of  
14 the tort [of abuse of process].' Similarly, in Tellefsen  
15 v. Key System Transit Lines (1961) 198 Cal.App.2d 611,  
16 613 . . ., the court, while finding no abuse in the case  
17 before it, recognized that under certain circumstances,  
18 the taking of an appeal could give rise to an abuse of  
19 process. (See also Tranchina v. Arcinas (1947) 78  
20 Cal.App.2d 522 . . . (eviction under false pretense  
21 constituted abuse of process)). Other jurisdictions  
22 have recognized the propriety of an abuse of process  
23 action when a plaintiff has intentionally misfiled an  
24 action for an improper purpose. (see Bond v. Chapin  
25 (1844) 49 Mass. (8 Met.) 31.) This broad reach of the  
26 'abuse of process' tort can be explained historically,  
27 since the tort evolved as a 'catch-all' category to  
28 cover improper uses of the judicial machinery that did  
not fit within the earlier established, but narrowly  
circumscribed, action of malicious prosecution. ....

The gist of the tort is the misuse of the power of  
the court: It is an act done under authority of the  
court for the purpose of perpetrating an injustice,  
i.e., a perversion of the judicial process to the  
accomplishment of an improper purpose. [citations] Some  
definite act or threat not authorized by the process or  
aimed at an objective not legitimate in the use of the  
process is required. And generally, an action lies only  
where the process is used to obtain an unjustifiable  
collateral advantage. For this reason, mere vexation or  
harassment are not recognized as objectives sufficient  
to give rise to the tort. [citations]

(Younger v. Solomon, supra, 38 Cal.App.3d at 296-297)

In the case at bar, the Miscavige declaration calling  
Armstrong a "liar" did not have any logical relation to the  
proceeding. Miscavige's declaration was submitted in an effort to  
avoid being deposed. In the course of this effort, Miscavige

1 and is not protected by the litigant's privilege.

2 Since the communication of materials filed in, or that are a  
3 part of, litigation to an unrelated third party is not covered by  
4 the litigation privilege, Armstrong's second cause of action is  
5 not precluded. (Shahvar, supra., 30 Cal.Rptr.2d at 599; Silberg  
6 v. Anderson (1990) 50 Cal.3d 205, 219)

7 **IV. CONCLUSION**

8 Based upon the foregoing arguments, Gerald Armstrong  
9 respectfully submits that Scientology's motion for summary  
10 judgment should be denied.

11 DATED: August 26, 1994

HUB LAW OFFICES

By: 

FORD GREENE  
Attorney for Defendant  
GERALD ARMSTRONG

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1 agreement. Walton also knew of Armstrong's intention to  
2 breach the agreement and was fully aware of the  
fraudulent nature of the conveyance."

3 (Separate Statement at ¶24)

4 CSI secretary Lynn Farny authenticated the Dead Agent Pack  
5 and admitted that he participated in its preparation. (Separate  
6 Statement at ¶ 23)

7 Farny testified that the source of the allegation in the  
8 "Dead Agent" document "Who is Gerald Armstrong?" that Michael  
9 Walton was "fully aware of the fraudulent nature of the  
10 conveyance" was "discovery exchanged back and forth in this case,"  
11 "deposition testimony by [Armstrong]," and "documents produced in  
12 this case, correspondence between [Walton and Armstrong]."

13 (Separate Statement ¶ 22) Farny testified that the Dead Agent  
14 Pack was distributed to the media. (Separate Statement at ¶ 23)

15 The documents produced in this case were produced subject to  
16 a protective order which states:

17 Immediately prior to Gerald Armstrong's deposition  
18 session of March 17, 1994, and after acting as Referee  
19 appointed by the Court in this case, I had conducted an  
20 in camera review of certain documents that Mr. Armstrong  
21 and the Gerald Armstrong Corporation had produced in  
22 response to CSI's First and Second Requests for  
23 Production to Gerald Armstrong and CSI's First Second  
24 Request for Production to The Gerald Armstrong  
25 Corporation, I produced certain of those documents to  
26 CSI pursuant to a protective order to which the parties  
27 stipulated on that date.

28 Said protective order was that the distribution of  
said documents was to be limited to the attorneys in  
this litigation and the use of said documents would be  
restricted to this litigation.

The Dead Agent Pack regarding Armstrong was based on CSI's  
use of documents that it was prohibited from using by a protective  
order. Based upon such violation, CSI distributed the Dead Agent  
Pack to the print media. Such is an abuse of the judicial process

1 claim to rebut the declaration of Vaughn Young submitted in  
2 opposition to a summary judgment motion brought by Scientology  
3 months earlier. In paragraph 54 of his declaration Miscavige  
4 states that Young stated that Armstrong had been in "fear of his  
5 life" due to the Fair Game attacks upon him. Young, however,  
6 never made any such claim. Thus, Miscavige uses a falsehood  
7 ("fear of his life") in a motion (to avoid being deposed)  
8 unrelated to that which he addresses (opposition to summary  
9 judgment) in order create the justification of an attack on  
10 Armstrong's reputation and character ("liar").

11 Such conduct is not protected by the privilege.

12 "The terms 'related to' or 'connected with' necessarily  
13 require more than a remote relationship or common  
14 factual genesis between two otherwise unconnected  
15 subjects. To come within the privilege, the fact  
16 communicated itself must have some bearing on or  
17 connection with the subject matter of the litigation."

18 (Solomon, 38 Cal.App.3d at 302)

19 Such is not the case here.

20 **III. AN ISSUE OF FACT EXISTS AS TO WHETHER OR NOT**  
21 **SCIENTOLOGY'S USE OF DISCOVERY CONSTITUTES AN**  
22 **ABUSE OF PROCESS**

23 Pursuant to discovery, Scientology produced a Dead Agent  
24 Pack. (Separate Stateent at ¶¶ 19-23) In part, it stated:

25 In 1990, Armstrong began to undertake actions which  
26 directly violated the agreement he had made. This  
27 placed him at risk that the Church would move to collect  
28 the damages that Armstrong's breaches entitled it to.  
To make it impossible for the Church to collect any  
damages, he fraudulently conveyed all his property  
including real property, personal property and cash to  
his friends and to a corporation he set up for that  
purpose, which he called, "The Gerald Armstrong  
Corporation."

One of the recipients of Armstrong's assets was an  
attorney named Michael Walton. Prior to signing the  
settlement agreement with the Church, Walton had advised  
Armstrong about the terms and conditions of the



PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following document:

**ARMSTRONG'S MEMORANDUM IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT;  
ARMSTRONG SEPARATE STATEMENT OF DISPUTED AND UNDISPUTED FACTS**

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew H. Wilson, Esquire  
Wilson, Ryan & Campilongo  
235 Montgomery Street, Ste. 450  
San Francisco CA 94104


BY HAND DELIVERY

Laurie J. Bartilson, Esquire  
Bowles & Moxon  
6255 Sunset Boulevard, Ste 2000  
Los Angeles, CA 90028

BY MAIL

- (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.
- (Personal Service) I caused such envelope to be delivered by hand to the offices of the addressee.
- (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct
- (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

DATED: August 26, 1994

  
\_\_\_\_\_